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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

OLUFEMI S. COLLINS and WANDA  
D. COLLINS,

Plaintiffs and Appellants,

v.

ASSET MANAGEMENT  
SPECIALISTS, INC. et al.,

Defendants and Respondents.

B270587

(Los Angeles County  
Super. Ct. No. KC067654)

APPEAL from orders and a judgment of the Superior Court of Los Angeles County, Robert A. Dukes, Judge. Orders dismissed in part; judgment affirmed.

Olufemi S. Collins, Wanda D. Collins, in pro per., for Plaintiffs and Appellants.

Peckar & Abramson, Eric M. Guzen, Kerry H. Sakaue, for Defendant and Respondent Asset Management Specialists, Inc.

Nelson & Fulton, Henry Patrick Nelson, Amber A. Logan, Defendants and Respondents County of Los Angeles, David Gutierrez, and Kathy Durdines.

No appearance by Defendants and Respondents and Michael Ryan Ambos.

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This is the second of three appeals stemming from the 2015 complaint filed by plaintiffs Olufemi S. Collins and Wanda D. Collins. We previously addressed this complaint in the context of plaintiffs’ appeals from judgments entered in favor of defendants not parties to this appeal<sup>1</sup> (*Collins v. JP Morgan Chase Bank N.A.* (Feb. 16, 2017, B267394) [nonpub. opn.] (*Collins II*)). We also file today our opinion in plaintiffs’ third appeal from this lawsuit against another set of defendants, Lighthouse Equities Group Inc. (Lighthouse), Michael Ryan Ambos, Jr. (Ambos), and The Auctionarium, Inc. (Auctionarium). (*Collins v. JP Morgan Chase Bank N.A.* (June 5, 2017, B271612) [nonpub. opn.]).

In this appeal, plaintiffs’ opening brief primarily involves defendants Asset Management Specialists, Inc. (AMS) and County of Los Angeles and Los Angeles County Deputy Sheriffs David Gutierrez (Gutierrez) and Kathy Durdines (Durdines) (collectively, County). Plaintiffs have also raised issues in this appeal as to Michael Ryan Ambos, Jr., and Michael Sean Durkin.

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<sup>1</sup> Those defendants were JP Morgan Chase Bank, N.A.; Federal National Mortgage Association, AlvaradoSmith, A Professional Corporation; Sung–Min Christopher Yoo; Lauren Marie Takos; Marvin Belo Adviento; McCarthy & Holthus, LLP; and Gayle Eileen Jameson.

Plaintiffs first contend the trial court erred in sustaining the demurrer of AMS without leave to amend. They next fault the trial court for denying their request to enter a default judgment against Durkin and Ambos. Plaintiffs finally challenge the judgment entered after the trial court granted the motion for judgment on the pleadings filed by County.

We dismiss the appeal as to AMS, Durkin and Ambos. We affirm as to County.

### **BACKGROUND**

The background facts for this litigation and two earlier lawsuits are recited in detail in two previous unpublished opinions. (*Collins v. JP Morgan Chase Bank* (Apr. 16, 2014, B244252) [nonpub.opn] [*Collins I*]; *Collins II, supra*, B267394.) To summarize, plaintiffs owned and resided in their home, but fell behind in their mortgage payments and lost the house in a nonjudicial foreclosure. In May 2011, they filed suit against a group of defendants, “alleging that they had conspired to foreclose on the Deed of Trust and obtain title to their house by fraudulently executing and recording documents.” (*Collins I, supra*, at \*3.) *Collins I* was essentially an action for wrongful foreclosure and quiet title. Defendants obtained summary judgment, and this court affirmed. (*Id.* Pp. \*6- \*7, \*23.)

Although their home had been foreclosed upon, plaintiffs did not leave the property. In 2013, Federal National Mortgage Association (Fannie Mae) initiated an unlawful detainer action against them. In May 2013, Fannie Mae obtained a judgment for possession of the premises.

Los Angeles County Sheriff deputies eventually removed plaintiffs from the home. After plaintiffs’ removal, Lighthouse, a

realty company, its licensed agent Ambos, and personnel with Auctionarium entered the property and were involved in disposing of personal property plaintiffs left behind and preparing the real property for sale.

“On May 19, 2015, plaintiffs filed [this] complaint against defendants and other parties who are not subject to this appeal. In summary, plaintiffs allege their eviction in 2013 was unlawful and premised on false documents. . . . Plaintiffs allege five causes of action against defendants: deprivation of their due process rights in violation of title 42 United States Code section 1983; deprivation of their procedural due process rights under Civil Code section 52.1; unlawful eviction based on defendants allegedly not possessing title to the real property; fraud based on defendants allegedly filing false documents to acquire the real property; and quiet title based on the alleged false documents recorded with the Los Angeles County Recorder.” (*Collins II*, *supra*, B267394, at \*5-\*6.)

The allegations against AMS in this action were as follows: “[A]fter Plaintiffs were denied further access to their Home, Defendant Lighthouse granted Defendant AMS access into the Plaintiffs [*sic*] Home. AMS deployed its employees to clean up Plaintiffs’ remaining valued properties of their Home inside and out in order to prepare the house for sale. AMS then posted its own sign on the window of Plaintiffs’ property.”

There were no allegations in the complaint against Durkin. He was not identified as a defendant in the caption or as a Doe. His name appeared only in the proof of service of summons as the individual who accepted service on behalf of defendant Lighthouse.

Ambos was identified in the complaint as a licensed real estate agent for Lighthouse. An inference from the complaint was that Lighthouse acquired plaintiffs' property after foreclosure. After plaintiffs were locked out of the home, Lighthouse used the services of Ambos, AMS and Auctionarium to dispose of plaintiffs' personal property and prepare the real property for sale.

As to County, the complaint recited that on May 29, 2013, Deputy Gutierrez made the first of several attempts to evict plaintiffs from the property. He suspended the action when plaintiffs produced paperwork from the unlawful detainer action.<sup>2</sup> The second eviction attempt on June 13, 2013, ended the same way.

Gutierrez and Durdines finally removed Olufemi Collins from the property on June 27, 2013, and authorized a private locksmith to change the homes' locks. Per the complaint, Olufemi Collins "was handcuffed and locked up in the back of Sheriff's Patrol Car." Once plaintiffs were locked out of the home, the deputies "delivered possession of their assets to Defendants Lighthouse as the new owner for the benefit of the other Defendants. The Sheriffs as State Actors collaborated with the other Defendants to deprive the Plaintiffs equal protection under the Law."

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<sup>2</sup> In 2011, the trial court issued a preliminary injunction in the unlawful detainer action prohibiting Fannie Mae from evicting plaintiffs from the property.

## DISCUSSION<sup>3</sup>

### AMS

Plaintiffs contend the trial court erred in sustaining the demurrer of AMS without leave to amend. The ruling itself is not appealable. The appeal lies only from a signed order of dismissal (*Kong v. City of Hawaiian Gardens Redevelopment Agency* (2002) 108 Cal.App.4th 1028, 1032, fn. 1; see also Code Civ. Proc., § 581d) or a judgment in favor of defendant (*Walker v. Los Angeles County Metropolitan Transportation Authority* (2005) 35 Cal.4th 15, 20; Code Civ. Proc., § 904.1.) The appellate record does not contain either, however; we dismiss the appeal as to AMS.

### Durkin

As mentioned above, Durkin was not identified in the complaint. He did not appear in the trial court or this court. His only involvement in this matter appears to have been as the recipient of the summons and complaint in this action on behalf of Lighthouse. This conclusion is consistent with the record references plaintiffs cited in support of their arguments against him. Plaintiffs contend the trial court erred by denying their request to enter a default judgment against Durkin. But the record clearly demonstrates they made no such request as to Durkin. The appeal is dismissed as to him.

### Ambos

Plaintiffs contend the trial court erred by denying their request to enter a default judgment against Ambos. This is not

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<sup>3</sup> The absence of a reporter's transcript or suitable substitute does not impede our appellate review.

an appealable order. In any event, the record clearly indicates no default judgment could have been entered against Ambos. Court minutes from a hearing on February 22, 2016, establish the default entered against Ambos on August 3, 2015, was “vacated because [it was] entered prematurely. Defendant’s special motion[] to strike [was] filed on 7/31/15, before the entries of default and motions were granted.” The appeal is dismissed as to Ambos.

### **County**

Plaintiffs contend the trial court erred in granting County’s motion for judgment on the pleadings. They seek de novo review, which the law requires: “A motion for judgment on the pleadings is equivalent to a demurrer and is governed by the same standard of review. All material facts which were properly pleaded are deemed true, but not contentions, deductions, or conclusions of fact or law. If leave to amend was not granted, we determine whether the complaint states a cause of action and whether the defect can reasonably be cured by amendment. If the pleading defect can be cured, the trial court committed reversible error. If not, we affirm. The plaintiff bears the burden of proof on this issue. Finally, the judgment will be affirmed if it is proper on any grounds raised in the motion even if the court did not rely on those grounds.” (*Mack v. State Bar* (2001) 92 Cal.App.4th 957, 961.)

Other than asking for de novo review, plaintiffs present little in the way of legal argument. They characterize the writ of possession for the property as “fraudulent,” contend the preliminary injunction issued in the unlawful detainer action was still outstanding as of the date of their eviction, and assert the

Sheriff's deputies should "have demanded further [c]larification prior to taking an action based on conflicting documents from different jurisdictions of the Courts." The argument adds, "The Sheriffs subjected the Plaintiffs to 'State created danger' (*Wood v. Ostrander*) [no citation included] by removing the Plaintiffs from his property and granting unauthorized looters free access to the Plaintiffs' properties." Plaintiffs do not ask this court to grant them leave to amend the complaint against County and make no suggestions as to how the complaint might be amended.

We review each cause of action of the complaint in turn.

*1. First Cause of Action — Title 42 U.S.C. Section 1983*

Plaintiffs sought general and punitive damages in this cause of action based on deprivation of their federal civil rights. They alleged the deputies wrongfully evicted them from their home as the result of a fraudulent writ of possession obtained by other defendants (not parties to this appeal). They contended an in-effect preliminary injunction prohibited the deputies' actions.

In connection with the motion for judgment on the pleadings, plaintiffs and County asked the court to take judicial notice of various documents. There is no reporter's transcript of the hearings and no one indicates how the court ruled on the request. The documents are in the appellate record, however, so we presume the trial court considered them and take judicial notice ourselves. (Evid. Code, § 459, subd. (a).) The documents from the unlawful detainer action requested by County included: (1) May 2, 2013 writ of possession in favor of Fannie Mae; (2) May 6, 2013 court order granting plaintiffs an emergency stay of the writ of possession to May 13, 2013; and (3) May 13, 2013 court order lifting the stay (finding "the injunction associated



with [the wrongful foreclosure action] expired by operation of law”). County also requested judicial notice of the May 28, 2013 order from this court denying plaintiffs’ petition for writ of supersedeas and request for immediate relief in the wrongful foreclosure action.

The judicially noticed documents described above demonstrate the deputies acted pursuant to a valid writ of possession. As plaintiffs no longer had the right to remain in the home, their removal by sheriff’s deputies did not violate a constitutionally guaranteed right. County itself could not be liable for the deputies’ actions. (*Monell v. New York City Dept. of Social Services* (1978) 436 US 658, 694 [“a local government may not be sued under [42 U.S.C.] § 1983 for an injury inflicted solely by its employees or agents”].)

Although Gutierrez and Durdines were sued in their individual and official capacities, the allegations against them pertain only to the official discharge of their duties. They were immune from liability to plaintiffs on this theory.

## *2. Second Cause of Action — Federal Due Process Violation*

This cause of action also falls under Title 42 U.S.C. 1983. It is based on alleged collusion between County and the defendants not involved in this appeal to evict them from the home without due process.

As discussed above, the eviction was accomplished pursuant to a court-ordered writ of possession. There was no due process violation as a matter of law.

3. *Third Cause of Action — Unlawful Eviction*

Plaintiffs sought monetary damages and return of the property in this cause of action. They failed to allege compliance with the Government Claims Act (Gov. Code, § 810 et seq.). The damages claim in this cause of action is accordingly barred as a matter of law. (Gov. Code, § 945.4.) As the wrongful foreclosure and unlawful detainer actions were already resolved against plaintiffs when they filed this lawsuit, the claims for nonmonetary relief, i.e., return of the property must be viewed as “incidental or ancillary to a prayer for damages.” (*Hart v. Alameda County* (1999) 76 Cal.App.4th 766, 782.) Accordingly, the failure to comply with the Government Claims Act is fatal to this entire cause of action.

4. *Fourth Cause of Action — Fraud*

Plaintiffs sought monetary damages in this cause of action. As discussed above, their failure to comply with the Government Claims Act bars this cause of action as a matter of law.

5. *Fifth Cause of Action — Quiet Title and Set Aside Foreclosure*

The allegations in this cause of action were the same as those in the wrongful foreclosure case plaintiffs filed in 2011. In 2014, before this action was filed, this court affirmed the judgment for the defendants in that matter. Plaintiffs were not entitled to relitigate the issues in this action.

### **DISPOSITION**

We dismiss the appeal as to AMS, Durkin, and Ambos. We affirm the judgment in favor of County. AMS and County are awarded costs on appeal.

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DUNNING, J.\*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

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\* Judge of the Superior Court of the County of Orange, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.